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December 24, 2014

Federal Election Commission
Office of Complaints Examination and Legal Administration
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COMMISSIONER

RE: MUR 6888 Response of William Hurd and Hurd for Congress

Dear Commissioners and Staff:

The undersigned represents Mr. William Hurd and Hurd for Congress (collectively, "Respondents"), and this correspondence serves as a response to a complaint filed by American Democracy Legal Fund ("Complainant") and designated by the Commission as MUR 6888.¹

For the reasons set forth herein, the Commission should find no reason to believe that Respondents have violated the Federal Election Campaign Act of 1971, as amended, and accordingly the Commission should dismiss the Complaint against them.

Summary of Complaint

Complainant alleges illegal coordination, resulting in prohibited contributions. Complainant filed an initial complaint on October 14, 2014 against the Republican National Committee ("RNC"), American Crossroads, Crossroads GPS, Americans for Prosperity, GOP Data Trust LLC ("Data Trust"), and i360, LLC ("i360"). A supplemental complaint (the "Complaint") was filed on October 28, 2014 against 27 additional respondents, all affiliated with the Republican Party, including state parties and congressional campaigns, one of which was Hurd for Congress.

Complainant misstates the law and makes unsubstantiated allegations in an all-too-familiar biennial October tradition of misusing the Commission complaint process for launching a baseless, carefully timed partisan attack. According to the Complaint, the limited, market-transaction relationships among Data Trust, i360, and other organizations have resulted in coordinated paid communications. In sum, Complainant argues that Respondents are illegally coordinating through the exchange of voter information – but doesn't identify with whom Respondents are coordinating, let alone which communications were coordinated, or explain

¹ This response is timely filed within the extension of time granted by the Commission to December 31, 2014.

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how such an exchange of information results in transmission of nonpublic information relating to candidate strategy.

Facts

Like any candidate committee, Hurd for Congress contracted with numerous vendors for a variety of services. One of those vendors was i360, a data management firm that supplies clients with database services such as voter information and analytics.

The services provided by i360 to Respondents during the course of the campaign were limited to specific, contractually-agreed-upon items, none of which involved the creation, production, or distribution of paid communications for Respondents.² Indeed, the Complaint states this very same fact: "These candidates are paying i360 for such services as 'voter contact database subscriptions,' 'list acquisition,' 'canvassing subscriptions,' and 'data management monthly canvassing apps.'"³

After Complainant filed its initial action against the RNC, i360 and additional parties, it apparently scoured publically available campaign finance reports and found 27 committees reporting disbursements to i360. The Complaint alleges, without any legal or factual basis, that i360 serves as a "common vendor" for these committees and for outside groups,⁵ and that consequently, "[i]t appears [the latter's] expenditures constitute coordinated communications and excessive contributions under the Commission's 'common vendor' rule."⁶ This claim is premised on an allegedly improper access of aggregated voter data by i360's various clients, via i360's database.

Legal Analysis

Complaints alleging improper coordination appeal to political operatives because they seemingly can be filed on the basis of mere speculation. For a complaint to be actionable, however, mere speculation does not suffice. The Commission must assess a complaint's allegations and credibility, as well as the law at issue, before finding reason to advance the complaint. As the D.C. Circuit Court of Appeals has put it, "mere 'official curiosity' will not suffice as the basis for FEC investigation."⁷

The Complaint argues that the "conduct" prong of the Commission's coordination standard has been met under these circumstances due to i360's "common vendor" relationship with various entities engaging in expenditures. The Commission summarizes this subprong as follows:

² See Contract, attached as Exhibit A.

³ Complaint at 7.

⁵ *Id.* at 8.

⁶ *Id.* at 9.

⁷ *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380,388 (D.C. Cir. 1981).

If the person paying for the communication employs a common vendor to create, produce or distribute the communication, and that vendor:

Is currently providing services or provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and

Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication.⁸

While i360 may be a vendor and may have separate contracts with multiple entities engaged in political expenditures, i360 simply is not a "common vendor" triggering applicability of this regulation, because it does not "create, produce, or distribute" paid communications.

Moreover, the Complaint does not allege, let alone proffer evidence, that i360 has acquired information about Hurd's campaign plans and needs, *and* conveyed such information to a third-party spender – *and* that such information was material to the creation, production or distribution of the third-party spender's communications. Complainant has not even bothered to allege that a third-party spender contracting with i360 made paid communications on Hurd's behalf. When you're trying to smear dozens of candidates seven days before a national election, who has time for minimal due diligence? The Complaint simply assumes and asserts, "[r]eports filed with the Commission have revealed the identities of the Republican state party committees and federal candidate committees that are using i360's voter database, and *therefore, passing on crucial non-public voter information* to i360's other 'independent' clients, entities that are legally prohibited from coordinating with the party and candidate committees."⁹ As palpably clear, this allegation does not meet, or even try to meet, the regulatory standard promulgated by the Commission. Raw data may be "information," but it is not "information about the campaign plans, projects, activities or needs of the candidate[.]"

Conclusion

The Complaint fails to provide any evidence or even a legitimate allegation that Respondents violated the Act by accepting prohibited contributions (from whom? how much? when?) via impermissible coordination. Now that the election is over and Complainant's last-minute pre-election stunt has served its only real purpose, the Commission should dismiss the Complaint and relieve Respondents from any further harassment.

Please contact me with any questions or for any additional information.

⁸ Federal Election Commission *Brochure on Coordinated Communications and Independent Expenditures*, summarizing 11 C.F.R. 109.21(d)(4).

⁹ Complaint at 6 (emphasis added).

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Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Adams", with a long horizontal flourish extending to the right.

Michael G. Adams

MGA/ap

Enclosure

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